

**REMARKS**

The Final Office Action mailed September 15, 2006, has been received and reviewed. Claims 1 through 59 are currently pending in the application, of which claims 1 through 11, 14, 24 through 37, 43 through 48, 50 through 57 and 59 are currently under examination. Claims 12, 15 through 23, 38 through 42, 49 and 58 are withdrawn from consideration as being drawn to a non-elected invention. Claims 1 through 11, 14, 24 through 37, 43 through 48, 50 through 57 and 59 stand rejected. Applicant proposes to amend claims 1, 28 and 46 and respectfully request reconsideration of the application as amended herein. No new matter has been added.

**35 U.S.C. § 102(b) Anticipation Rejections**

**Anticipation Rejection Based on U.S. Patent No. 5,979,691 to Von Holdt**

Claims 1 through 3, 5 through 10, 13, 15 (sic), 24, 25 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Von Holdt (U.S. Patent No. 5,979,691). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully notes that the rejection includes claim 15, which is withdrawn from consideration. Applicant assumes the rejection was to be directed to claim 14, and has treated it as such in this response.

Claim 1, as proposed to be amended, is not anticipated by Von Holdt. While the Examiner is charged with the broadest reasonable interpretation of the reference, Applicant respectfully asserts that arrangement of the base of the reference in association with what might be termed moveable structure, an engagement feature and an attachment member, does not structurally correspond to a requirement of claim 1 of an “engagement feature protruding from the at least one movable structure and sized and configured to cooperatively engage an associated wall structure of a side wall of the tubular member from within the bore thereof.” (emphasis

added) The moveable structure, engagement feature and attachment member of the reference are all disposed *outside* of the bore of the container 10 of the reference. Further, no side wall of any structure is engaged by the engagement feature. The engagement features of the reference engage apertures in a flange 28 which lies outside of the bore of the container 10. Still further, claim 1 as proposed to be amended recites that the at least one moveable structure is movable relative to the base substantially within a periphery thereof, which is certainly not the case with Von Holdt. Accordingly, the claim is not anticipated.

Claims 2, 3, 5-10, 13, 14, 24, 25 and 27 are allowable as depending from claim 1.

Anticipation Rejection Based on U.S. Patent No. 5,829,591 to Lyons

Claims 28, 32, 35, 36 and 43 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lyons (U.S. Patent No. 5,829,591). Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant respectfully asserts that claim 28, as proposed to be amended, is not anticipated by Lyons. Applicant, notably, has merely proposed to amend claim 28 to conform to the amendments proposed to claim 1 to further distinguish the invention from the prior art, and not for the purposes of overcoming the rejection.

Applicant respectfully asserts that the Examiner has misread Lyons with respect to claim 28. Specifically, attachment member 42 is located on the container (outer hollow member) 14, not on closure element (inner hollow member) 12 as is required by the claim. Moreover, not only is the element 24 also located on the container (outer hollow member) 14, but element 24 is a slot, which is to say a *hole*, and cannot therefore be either a “structure” or “moveable.” Still further, engagement feature 26 is, again, located on container (outer hollow member) 14 and not on closure element (inner hollow member) 12 as is required by the claim. Therefore, the claim is not anticipated.

Claims 32, 35, 36 and 43 are allowable as depending from claim 28.

Anticipation Rejection Based on U.S. Patent No. 3,991,446 to Mooney et al.

Claims 1 through 11, 13, 14, and 24 through 27 stand rejected under 35 U.S.C. § 102(b)

as being anticipated by Mooney et al. (U.S. Patent No. 3,991,446). Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 1, as proposed to be amended, is not anticipated by Mooney et al. Applicant respectfully notes that the same arguments pertaining to Von Holdt also pertain to Mooney. That is to say, the engagement feature 22 of this reference is, also, not configured to cooperatively engage a wall structure of a side wall of a tubular member. Instead, engagement feature 22 engages, at best, a radially inwardly extending lip at the end of a conduit 25 (FIG. 4) or an inner wall 12 of, for example, a junction box (FIG. 3). In each such instance, the engagement is in an axial direction, not a radial direction, such as would be effected by engagement with a side wall. Accordingly, claim 1 is not anticipated.

Claims 2-11, 13, 14 and 24-27 are allowable as depending from claim 1.

### 35 U.S.C. § 103(a) Obviousness Rejections

#### Obviousness Rejection Based on U.S. Patent No. 5,730,352 to Deekes in view of U.S. Patent No. 1,351,496 to Spooner

Claims 1 through 11, 13, 14, 24 through 37, 43 through 48, 50 through 57 and 59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Deekes (U.S. Patent No. 5,730,352) in view of Spooner (U.S. Patent No. 1,351,496). Applicant respectfully traverses this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Claims 1 and 28 are allowable over the combination of Deekes and Spooner for the reasons previously asserted with respect to the allowability of claim 1 over either Von Holdt or

Mooney et al. The Deekes and Spooner references, in combination, do not teach or suggest the limitations set forth in claims 1 and 28 as proposed to be amended, in that (as acknowledged by the Examiner) Deekes has a moveable structure 13 and engagement feature 11 which lie outside the container, and engage an outer surface thereof, contrary to the requirements of each of claims 1 and 28. Further, the Deekes moveable feature does not move substantially within a periphery of the base (which must fit within the container, per the requirements of the claims).

In addition, there is no motivation to combine Spooner with Deekes, as Spooner (as acknowledged by the Examiner) is directed to threaded closures for jars, and not to resilient closures. Thus, absent reference to Applicant's own disclosure, the use of which would constitute impermissible hindsight, there is no motivation to reconfigure the closure of Deekes so as to fit within the container. In other words, Spooner, with its threaded closure, provides no motivation whatsoever that the Deekes closure would desirably be modified by reversing its structure.

In addition, Applicant notes that Deekes is directed to so-called "flat pack" containers wherein a flat sheet of material is rolled or folded into a tubular container (round or rectangular) and capped at each end with a closure having an appropriately shaped *groove for receiving the edge of the tubing*, which helps maintain the tubular shape of the container as well as close the end thereof. Were one to reconfigure the closure of Deekes so as to lie within the container, there would be no edge support to help maintain container shape.

Accordingly, claims 1 and 28 are allowable over Deekes in combination with Spooner.

Claims 2-11, 14, 14, 24-37, 43-48, 50-57 and 59 are allowable as respectively depending from either claim 1 or claim 28.

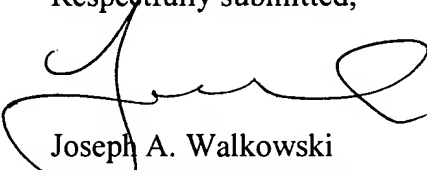
### ENTRY OF AMENDMENTS

The proposed amendments to claims 1, 28 and 46 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search. In addition, the amendments could not have been earlier presented as they are responsive to new grounds of rejection. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

### CONCLUSION

Claims 1 through 59 (including withdrawn claims 12, 15-23, 38-42, 49 and 58) are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

Respectfully submitted,



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